

RESOLUTION NO. 92-156

APPROVING EXECUTION OF THE
AGREEMENT FOR SALE AND FINANCING OF ELECTRIC SYSTEM FACILITIES

WHEREAS, the Northern California Power Agency (NCPA) is coordinating necessary studies for PG&E system reliability improvement with PG&E and Lodi staff; and

WHEREAS, transformer capacity at the PG&E Lockford substation is no longer adequate to provide reasonable reliability and must be supported with a short term emergency "fix" pending a long term solution to reliability improvement; and

WHEREAS, the long term solution may involve installation of transformers, circuit-breakers, and other system additions; and

WHEREAS, NCPA in concert with PG&E will determine the extent of physical additions necessary to accomplish the long term solution (the "Project"), which may require dedication of some facilities to PG&E; and

WHEREAS, the Agreement sets forth the terms and conditions of the acquisition and construction by NCPA of the Project, issuance of Bonds to make the proceeds thereof available to pay the costs of the Project, and sale by NCPA of system additions to the City; and

WHEREAS, the Lodi coordinator for this study and Project has been the Electric Utility Director and it is recommended that person continue as Authorized City Representative for purposes of the Agreement; and

WHEREAS, NCPA Counsel and the NCPA Commission have reviewed the Agreement and recommend its approval.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes execution of the Agreement For Acquisition, Construction and Financing of Electric System Facilities.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Agreement and the Electric Utility Director shall be the Authorized Representative for purposes of the Agreement.

Dated: September 2, 1992

=====

I hereby certify that Resolution No. 92-156 was passed and adopted by the Lodi City Council in a regular meeting held September 2, 1992 by the following vote:

Ayes: Council Members - Hinchman, Pennino, Sieglock, Snider
and Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - None

Alice M. Reimche
Alice M. Reimche
City Clerk

92-156

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CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
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THOMAS A. PETERSON
City Manager
ALICE M. REIMICHE
City Clerk
BOB McNATT
City Attorney

September 2, 1992

Northern California Power Agency
180 Cirby Way
Roseville, California 95678

Dear Sirs:

I am acting as counsel to the City of Lodi ("the City") under the Agreement for the Sale and Financing of Electric System Facilities, dated as of August 1, 1992 (the "Agreement") between the City and the Northern California Power Agency (the "Agency"), and I have acted as counsel to the City in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the City, (ii) all necessary documentation of the City relating to the authorization, execution and delivery of the Agreement, and (iii) an executed counterpart of the Agreement.. (Capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Agreement.)

Based upon the foregoing and an examination of law and such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California, together with the governing instruments, ordinances and public proceedings of the general law City, I am of the opinion that:

1. The City is a municipal corporation, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within the State of California.

2. The City has full legal right, power and authority to enter into the Agreement and to carry out and consummate all transactions contemplated thereby, and the City has complied with the provisions of applicable law in all matters relating to such transactions required to be complied with as of the date hereof.

3. The Agreement has been duly authorized, executed and delivered by the City, is in full force and effect as to the City in accordance with its terms and, assuming that the Agency has all the requisite power and authority, and has duly executed and delivered such Agreement, constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

4. Payments by the City under the Agreement will constitute an operating expense of the City and are to be made solely from the

Revenues of its Electric System, as provided in Section 6(c) of the Agreement.

5. No approval, consent or authorization of any other governmental or public agency, authority or person is required for the execution and delivery by the City of the Agreement, or the performance by the City of its obligations thereunder.

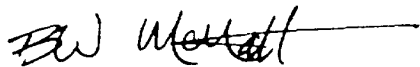
6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the City, or any commitment, agreement or other instrument known to me after reasonable investigation to which the City is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the City (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the City or its affairs.

7. To the best of my knowledge after reasonable investigation, there is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or threatened against or affecting the City or any entity affiliated with the City or any of its officers in their respective capacities as such, nor is there any basis therefor, which questions the powers of the City referred to in paragraph 2 above or the validity of the proceedings taken by the City in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting creditors' rights generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transactions other than those described herein.

Sincerely,



BOB W. McNATT
City Attorney

BM:vc

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AUG 28 1992
Electric Utility Dept.

AGREEMENT FOR THE SALE AND
FINANCING OF ELECTRIC SYSTEM FACILITIES

Dated as of August 1, 1992

By and Between

NORTHERN CALIFORNIA POWER AGENCY

and

CITY OF LODI

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**AGREEMENT FOR THE SALE AND
FINANCING OF ELECTRIC SYSTEM FACILITIES**

This Agreement, dated as of August 1, 1992, by and between Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the City of Lodi, California (the "City"), a municipal corporation duly created, organized and existing under and pursuant to the laws of the State of California,

WITNESSETH:

WHEREAS, NCPA is a joint powers agency of the State of California, created pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the Joint Powers Act); and

WHEREAS, NCPA is authorized to issue its Bonds (capitalized terms used herein shall have the meanings given such terms in Section 1 hereof) to finance the Costs of the Project for the City under and on the terms and conditions specified in Article 4 of the Joint Powers Act; and

WHEREAS, NCPA proposes to acquire and construct, or cause to be acquired and constructed, the Project and dedicate or cause to be dedicated all or any portion of the Project, as described herein, to Pacific Gas and Electric Company; and

WHEREAS, to provide for financing of the Costs of the Project, NCPA desires to sell the Project to the City, in consideration of NCPA's undertaking to issue NCPA's Bonds to finance the Costs of the Project as herein provided, on the terms and conditions herein specified; and

WHEREAS, the City desires to purchase the Project from NCPA on terms and conditions sufficient to provide funds to pay the principal of, premium, if any, and interest on the Bonds, and the other terms and conditions herein specified; and

WHEREAS, NCPA and the City now desire to enter into this Agreement to provide further for the acquisition, construction and financing of the Project, the sale by NCPA of the Project to the City, and the security for the Bonds to be issued to finance the Costs of the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. **Definitions.** The following terms shall, for all purposes of this Agreement, have the following meanings:

(a) "Agreement" means this Agreement for the Sale and Financing of Electric System Facilities by and between NCPA and the City, dated as of August 1, 1992, as modified or amended in accordance with the terms hereof.

(b) "Authorized City Representative" means each member of the City Council of the City, the Mayor of the City and any other officer, employee or agent of the City designated in a resolution adopted by the City Council of the City and delivered to NCPA and each Trustee, which resolution shall be deemed to continue in full force and effect until a copy of any amendment or rescission of such resolution has been delivered to NCPA and each Trustee.

(c) "Bond Resolution" means an instrument providing for the issuance of Bonds and the terms thereof and may be a resolution, indenture of trust, order, agreement, or other instrument.

(d) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA issued or entered into at the request of the City pursuant to this Agreement to finance the Costs of the Project, and shall include that portion of an issue of NCPA bonds, notes or other evidences of indebtedness issued to finance the Costs of the Project and the costs of other projects, which portion is specifically identified as Bonds for purposes of this Agreement in the applicable Bond Resolution (including, without limitation, contracts relating to letters of credit or other credit or liquidity enhancement devices, interest rate swap and other agreements relating to interest rate or other cash-flow exchanges such as those authorized by the Public Finance Contracts Law, and other contracts which are characterized as debt by NCPA entered into at the request of the City in connection with the Bonds or the Project), including refunding bonds issued to refinance the Costs of the Project and includes additional bonds to pay the Costs necessary to complete the Project or to refurbish, improve, expand or modify the Project. For purposes of this Agreement, Bonds shall be considered outstanding as of any date if such Bonds have not been paid, or if provision for the payment of the principal, premium, if any, and interest on such Bonds has not been made in accordance with the Bond Resolution pursuant to which such Bonds have been authorized.

(e) "Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder and shall include any successors to such statute and regulations.

(f) "Commission" means the Commission which is the governing body of NCPA established pursuant to the Joint Powers Agreement.

(g) "Cost" means all costs and expenses of planning, designing, acquiring, constructing, installing, refurbishing and

financing the Project, placing the Project in operation, disposal or retirement of the Project, dedicating all or any portion of the Project to Pacific Gas and Electric Company, decommissioning of the Project, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred and shall include, but shall not be limited to:

(1) Costs of preliminary investigation and development, the performance or acquisition of feasibility, environmental and planning studies, and the securing of regulatory approvals, as well as costs for land and land rights, water and water rights, engineering and contractors' fees, labor, materials, equipment, utility services and supplies, legal and accounting fees, financial services fees, fees incurred pursuant to any lending, liquidity or credit facility or agreement and financing expenses.

(2) Working capital and reserves.

(3) Interest accruing in whole or in part on Bonds prior to and during construction of the Project or any portion thereof, and for such additional period as the City may determine.

(4) The deposit or deposits from the proceeds of Bonds in any fund or account required by a Bond Resolution.

(5) The payment of principal, redemption price, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness issued in anticipation of Bonds, the proceeds of which were applied to any of the costs of the Project described herein.

(6) Training and testing costs which are properly allocable to the acquisition, installation, refurbishing or construction of the Project or any portion thereof or placing the Project or any portion thereof in operation.

(7) All costs of insurance and contract bonds applicable to the period of acquisition, installation, refurbishing or construction of the Project or any portion thereof and placing the Project or any portion thereof in operation.

(8) All costs relating to injury and damage claims arising out of the acquisition, installation, refurbishing or construction of the Project or any portion thereof, or placing the Project or any portion thereof in operation, in each case less proceeds of insurance.

(9) Legally required or permitted federal, state and local taxes and payments in lieu of taxes.

(10) All costs relating to the issuance and sale of Bonds, including the costs of credit or liquidity enhancement for

Bonds or any letter of credit, insurance policy or surety bond providing any reserve therefor.

(11) The reimbursement to the City or NCPA of any amounts paid in connection with the planning, designing, acquiring, constructing, installing, refurbishing or financing of the Project.

(12) Contributions-in-aid-of-construction paid to interconnect the Project to the Electric System.

(13) All other costs properly allocable to the acquisition, planning, design, construction, installation and financing of the Project, or placing the Project or any portion thereof in operation.

(h) "Debt Service" means, with respect to any period, the aggregate of the amounts required by each Bond Resolution to be paid during said period into any fund or account created by the Bond Resolution for the sole purpose of paying or providing reserves for paying the principal (including sinking fund installments) of and premium, if any, and interest on all the Bonds from time to time outstanding and shall include any amounts payable under letters of credit or other credit or liquidity enhancement devices, interest rate swap and other agreements relating to interest rate or other cash-flow exchanges such as those authorized by the Public Finance Contracts Law and other contracts which are characterized as debt by NCPA entered into at the request of the City in connection with the Bonds or the Project.

(i) "Electric System" means, with respect to the City, all properties and assets, real and personal, tangible and intangible, of the City now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the City is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the City's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(j) "Facilities Agreement" means the Interim Facilities Agreement, dated as of June 27, 1991, among the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara and Ukiah, the Plumas-Sierra Rural Electric Cooperative and the Turlock Irrigation District, as amended and supplemented from time to time, and includes any successor agreement.

(k) "Fiscal Year" means the then current fiscal year of NCPA, which on the date of this Agreement is the period from July 1 to the next succeeding June 30.

(l) "Full Operation Date" means the first date when the Project is capable of producing and delivering capacity and energy in commercial operation, as shall be determined by the Commission of NCPA in accordance with prudent utility practices.

(m) "Interconnection Agreement" means the Interconnection Agreement among Pacific Gas and Electric Company, NCPA, and certain members of NCPA, as the same may be amended and supplemented from time to time, and including any successor agreement.

(n) "Joint Powers Agreement" means the Joint Exercise of Powers Agreement - Northern California Power Agency, dated as of July 19, 1968, as amended, among the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, the Plumas-Sierra Rural Electric Cooperative, the Turlock Irrigation District and the Truckee Donner Public Utility District, establishing NCPA.

(o) "Project" means those certain 115kV transformers, breakers, switches and 115kV transmission lines, as more particularly described in Appendix C hereto, all or any portion of which may be dedicated to Pacific Gas and Electric Company.

(p) "Public Finance Contracts Law" means Chapter 12 of Division 6 of Title 1 of the Government Code of the State of California, as the same may be amended and supplemented from time to time and shall include any successors to such statute.

(q) "Revenues" means, with respect to the City, all income, rents, rates, fees, charges, and other moneys derived by the City from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

(r) "Trustee" means the entity or entities, if any, acting as the trustee under any Bond Resolution.

2. Purpose. The purpose of this Agreement is to set forth the terms and conditions of (i) the acquisition and construction by NCPA of the Project; (ii) the undertaking by NCPA to issue Bonds to make the proceeds thereof available to pay the Costs of the Project; and (iii) the sale by NCPA of the Project to the City and the undertaking of the City to make payments with respect to, among other things, Debt Service on the Bonds.

3. Acquisition, Construction and Financing of the Project. NCPA will use its best efforts to cause or accomplish the acquisition, construction and financing of the Project, including obtaining all necessary authority and rights therefor and performing all things necessary or convenient in connection therewith.

NCPA hereby designates the City to undertake, and the City hereby agrees, on behalf of NCPA and in satisfying its obligations with respect to the acquisition and construction of the Project, to undertake and be responsible for the acquisition, installation and construction of the Project and placing the Project in operation and agrees to provide for, or cause to be provided for, such acquisition, installation, construction of the Project and placing the Project in operation. The City may modify the Project as it, in its sole discretion, shall determine, and the City shall have no liability to NCPA for failure to complete the acquisition, installation and construction of the Project or any failure to place the Project into operation regardless of the reason for such failure, provided, however, if for any reason the acquisition, installation or construction of the Project, or placing the Project into operation, shall not be completed or shall be delayed, there shall be no resulting diminution in or postponement of the payments to be made by the City pursuant to this Agreement. Notwithstanding the foregoing, pursuant to a separate agreement or agreements between NCPA and the City setting forth the rights and obligations of each of the parties, NCPA may act as project administrator for all or any portion of the Project and, to the extent authorized by such agreement or agreements, to enter into construction contracts with one or more vendors with respect to the Project. Except to the extent provided in any such agreement, NCPA shall not be responsible or liable for the acquisition, installation or construction of the Project or placing the Project into operation.

In order to provide funds to pay the Costs of the Project, NCPA shall use its best efforts to sell, issue and deliver Bonds as soon as practicable after the execution and delivery of this Agreement in an amount sufficient to pay the estimated Costs of the Project, including the costs of issuance of such Bonds, providing capitalized interest on such Bonds, funding any debt service or other reserves required by the applicable Bond Resolution, and shall cause each applicable Bond Resolution to provide that the Bond proceeds, and any other monies, held under such Bond Resolution for such purpose shall be made available to

the City to pay the Costs of the Project, upon appropriate requisitions by the City therefor, submitted pursuant to the terms of such Bond Resolution; provided, however, that nothing herein contained shall restrict the authority of any Trustee to apply funds held under a Bond Resolution to the payment of Debt Service on Bonds or maintaining reserves therefor in accordance with the terms of such Bond Resolution. Monies held under each Bond Resolution representing Bond proceeds, payments by the City or interest on either thereof shall be invested, to the extent permitted by the applicable Bond Resolution, at the direction of the City to the applicable Trustee, in such investments as may be permitted under such Bond Resolution and, to the extent not required to be rebated to the United States Treasury, interest or other investment earnings on such monies shall be applied pursuant to such Bond Resolution to reduce payments that would otherwise be required to be made by the City thereunder and hereunder.

As further consideration for the sale of the Project by NCPA to the City pursuant to this Agreement, upon the written request of the City, NCPA agrees to use its best efforts to sell, issue and deliver additional Bonds to provide additional funds to pay Costs of the Project, including any capital improvements to be made after the Project is placed into operation, or to refund outstanding Bonds; provided, however, that the failure of NCPA to sell, issue and deliver any such additional Bonds shall not release the City from any of its obligations under this Agreement, including without limitation, the obligation to make payments when due pursuant to this Agreement, regardless of the reason for such failure. NCPA shall cause each applicable Bond Resolution to provide that the Bond proceeds, and any other monies, held under such Bond Resolution for such purpose shall be made available to the City to pay Costs of the Project, upon appropriate requisitions to the applicable Trustee by the City therefor, submitted pursuant to the terms of such Bond Resolution.

4. Sale of Project by NCPA. NCPA hereby sells the Project to the City and the City hereby purchases the Project from NCPA, in each case on the terms and conditions contained herein.

5. Title to Project; Operation and Maintenance. Title to each segment or component of the Project shall vest in the City upon the completion of the acquisition or construction, as appropriate, of such segment or component. NCPA shall deliver such documents or instruments as the City may reasonably request to evidence the vesting of any segment or component of the Project in the City as herein provided. The City shall be responsible for the operation and maintenance of the Project. As owner and operator of the Project, the City shall operate and dispatch the Project and shall provide such maintenance, renewals and replacements of the Project as the City shall determine in its sole discretion. NCPA shall not take any action, or cause any action to be taken, during the term of this Agreement to encumber the Project or to prevent the City from having exclusive possession, custody and enjoyment of

the Project. Neither NCPA, the Trustee nor any owner of any Bonds shall have any lien on or security interest in the Project.

6. Payments to Constitute Special Obligations. (a) The obligations under this Agreement are incurred by the City for the benefit of future holders of Bonds, shall commence and continue to exist and be honored by the City whether or not the acquisition and construction of the Project as completed or completed in a timely manner and constitutes an obligation to perform such obligations whether or not the Project is made available or delivered or provided.

(b) Any payments required to be made by, or costs incurred by, NCPA or the City pursuant to Section 9.5 of the Interconnection Agreement shall not be made under this Agreement.

(c) The City is obligated to make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System. Nothing herein shall be construed as prohibiting the City from using any other funds and revenues for purposes of satisfying any provisions of this Agreement.

(d) The City shall make payments under this Agreement whether or not the Project or any part thereof is completed, operable, operating or retired. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or the City under this Agreement or any other agreement.

(e) The City covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

(f) The City covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge, lien, or encumbrance upon any or all such Revenues; provided that the obligation of the City to make payments under this Agreement shall not constitute a legal or equitable pledge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues; and further provided that neither the City nor the State of California or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in this Agreement.

7. City Covenants. In consideration of the sale of the Project by NCPA, the City shall pay an amount equal to the Debt Service on the Bonds, all other payments relating to the Bonds or the Project required to be made under the Bond Resolutions and any

other costs incurred by NCPA in connection with the Project and this Agreement, including amounts payable pursuant to Section 15 hereof.

8. Payments to NCPA. A billing statement prepared by NCPA will be sent to the City not later than the fifteenth (15th) day of each calendar month showing the amount payable to NCPA by the City: (i) for amounts due under this Agreement with respect to Debt Services and other payments required to be made under the Bond Resolutions in the next succeeding calendar month; and (ii) for amounts due under this Agreement, other than payments relating to Debt Service or other payments required to be made under the Bond Resolutions, for the preceding calendar month, and the amount of any credits or debits as a result of any appropriate adjustments; provided, however, that the failure of NCPA to so bill for amounts due with respect to Debt Services or other payments required to be made under the Bond Resolutions, or any errors in such billings, shall not relieve the City of its obligations to make such payments at the times and in the amounts required by the Bond Resolutions. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement, except that any invoice coming due on a Friday, holiday or weekend shall be adjusted by NCPA to come due on the closest following workday, as applicable.

Any amount due and payable but not paid by the City within thirty (30) days following the date of the billing statement shall bear interest at the per annum prime rate (or reference rate) of the Bank of America National Trust and Savings Association then in effect, plus two percent per annum, computed on a daily basis until paid. Such computation shall be made on a simple basis without compounding.

NCPA shall mail all billing statements within 24 hours of the billing statement date thereon. The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment, except that payments received later than seven days after the due date shall be declared late without regard to postmark date.

Payment via wire transfer is the preferred method of making payments to NCPA. For wire transfers, the transaction date shall be used to determine the timeliness of payments.

If the City questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. Upon the request and at the expense of the City, NCPA shall make available for inspection and copying by the City or its duly authorized representative, during normal business hours and subject to such security and safety provisions as NCPA shall reasonably determine,

all of its books and records pertaining to the Project, this Agreement, and amounts billed by NCPA pursuant to this Agreement.

If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due the City, which refund shall bear interest from the date NCPA received the excess payment from the City until the date of the refund. The rate of interest shall be the Bank of America National Trust and Savings Association average Regular Savings rate, computed on a simple basis without compounding, for the period the excess is outstanding. If NCPA and the City fail to agree on the correctness of a bill within thirty (30) days after the City has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the California Code of Civil Procedure.

9. Events of Default. The following shall constitute events of default under this Agreement: (a) the failure of the City to make any payment with respect to Debt Service or other payments required to be made under a Bond Resolution in full when due as required by this Agreement; and (b) the failure of either party to perform any of its other obligations hereunder, which failure is not remedied within sixty (60) days from the date of delivery of written notice of such failure to the defaulting party by the other party, a Trustee or, to the extent provided in a Bond Resolution, Bondholders; provided, however, if any such failure, (other than a failure of the City described in clause (a), or to otherwise pay any amounts when due under this Agreement), is not remedied within such sixty (60) day period but the defaulting party shall have instituted remedial action within such period and is diligently pursuing correction, then no event of default shall be deemed to exist for so long as such defaulting party is continuing to diligently take reasonable steps to effect such remedy.

10. Remedies. Subject to the provisions of this Agreement, a non-defaulting party may protect and enforce its rights hereunder by suit or suits in equity or at law, whether for the specific performance of any covenant herein or for damages or in aid of the execution of any power granted herein or any other remedy available under any provision of applicable law. No remedy by the terms of this Agreement conferred upon or reserved to the non-defaulting party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or at law or in equity or by statute whether now in existence or established after the effective date of this Agreement.

11. City Direction. In order to provide funds to finance the Costs of the Project, NCPA, as soon as practicable after the execution of this Agreement, shall use its best effort to issue Bonds to finance the Costs of the Project and, if requested by the City to issue additional Bonds and refunding Bonds as

provided in this Agreement; provided, however, that NCPA shall not adopt or enter into a Bond Resolution or a contract for the sale of Bonds without the prior written approval of the City. NCPA agrees to follow all lawful directions of the City with respect to the purchase or redemption of Bonds and any other action under the terms of the applicable Bond Resolution within the control of NCPA. Any request, approval, authorization, direction or consent of the City for purposes of this Agreement shall be deemed properly made or given if such request, approval, authorization, direction or consent is contained in a writing signed by an Authorized Representative of the City.

12. Term. This Agreement shall take effect upon the execution hereof by the authorized representatives of the parties hereto, and shall remain in full force and effect until the later of (i) the expiration of the useful life of the Project or (ii) the date on which no Bonds remain outstanding; provided, however, that in no event shall the term of this Agreement with NCPA as a party extend beyond the date of termination of NCPA. This Agreement shall not be subject to termination by any party under any circumstances prior to the term specified in this Section, whether based upon the default of the other party under this Agreement or for any other cause whatsoever so long as any Bonds are outstanding under a Bond Resolution.

13. Amendments. So long as any Bonds are outstanding, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

14. Bonds, Limited Obligations of NCPA. NCPA shall not be obligated to pay the principal of, or premium, if any, or interest on the Bonds, except from amounts paid by the City pursuant to this Agreement or other moneys, if any, otherwise available for such payment pursuant to the applicable Bond Resolution. The City hereby acknowledges that NCPA's sole source of moneys to repay the Bonds will be provided by the payments made by the City pursuant to this Agreement, together with other moneys, if any, held by the Trustee under the applicable Bond Resolution, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the applicable Trustee, the City shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the City, NCPA or any third party.

15. Indemnification. The City releases NCPA from and agrees and covenants that NCPA shall not be liable for, and

covenants and agrees to indemnify and hold harmless the NCPA and its officers, employees and agents (collectively, the "Indemnified Parties") from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; (2) the issuance of any Bonds or any certifications or representations made in connection therewith (in each case other than statements made in or omissions from offering documents relating to the Bonds, which shall be governed exclusively by clause (3) below) and the carrying out of any of the transactions contemplated by the Bonds, any Bond Resolution, or this Agreement; or (3) any untrue statement or alleged untrue statement of any material fact relating to the City or omission or alleged omission to state a material fact relating to the City necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in any official statement or other offering circular approved in writing by the City utilized by any underwriter or placement agent in connection with the sale of any Bonds except that the City shall not be liable for any such loss, claim, damage, liability or expense that results from the willful misconduct on the part of the Indemnified Party seeking such indemnity. The City further covenants and agrees to pay or to reimburse each Indemnified Party for any and all costs, reasonable attorneys fees, liabilities or expenses incurred in connection investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions, except to the extent that the same arise out of the willful misconduct of the Indemnified Party claiming such payment or reimbursement. This indemnity agreement shall not be construed as a limitation on any other liability which the City may otherwise have to any Indemnified Party, provided that in no event shall the City be obligated for double indemnification.

An Indemnified Party shall, promptly after the receipt of notice of any action against such Indemnified Party in respect of which indemnification may be sought against the City, notify the City in writing, but the omission to notify the City of any such action shall not relieve the City from any liability which it may have to such Indemnified Party under the indemnity agreement contained herein except to the extent that the City is prejudiced thereby. In case any action shall be brought against an Indemnified Party and such Indemnified Party shall notify the City of the commencement thereof, the City may, or if so requested by such Indemnified Party shall, participate therein or assume the defense thereof, with counsel satisfactory to such Indemnified Party, and after notice from the City to such Indemnified Party of an election so to assume the defense thereof, the City will not be liable to such Indemnified Party under this Section for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than the costs of

reasonable investigation. If the City shall not have employed counsel to have charge of the defense of any such action or if an Indemnified Party shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to the City (in which case the City shall not have the right to direct the defense of such action on behalf of such Indemnified Party), such Indemnified Party shall have the right to retain legal counsel of its own choosing and reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the City, provided that in no event shall the City be obligated to pay more than one firm of lawyers with respect to the defense of any Indemnified Party.

The City shall not be liable for any settlement of any such action effected without its consent by any Indemnified Party, but if settled with the consent of the City or if by a final judgment for the plaintiff in any such action against the City or any Indemnified Party, with or without the consent of the City, the City agrees to indemnify and hold harmless such Indemnified Party to the extent provided herein.

The provisions of this Section shall survive the retirement of the Bonds and the termination of this Agreement.

16. Tax Covenant. Notwithstanding any other provision of this Agreement, neither NCPA nor the City shall transfer, assign, sell or exchange any portion of the Project or any other interest in the Project, directly or indirectly, in any manner, or shall take, or to the extent it can control the same permit to be taken, any other action or actions, which would adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes under Section 103 of the Code, including without limitation, by reason of the classification of any Bond as a "private activity bond" within the meaning of said Code.

17. Notices. Any notice or demand to NCPA under this Agreement shall be deemed properly given, if delivered by hand, sent by certified or registered mail postage prepaid and return receipt requested, or sent via facsimile or other electronic media and confirmed by telephone or in writing within twenty-four (24) hours, addressed to the General Manager of NCPA at the address shown in Appendix A. Any notice or demand to the City under this Agreement shall be deemed properly given if sent by certified or registered mail postage prepaid and return receipt requested, or sent via facsimile or other electronic media and confirmed by telephone or in writing within twenty-four (24) hours, addressed to the initial signatory for the City shown on the signature pages hereof at the address shown in Appendix A. The designation of the name, the address and any of the telephone or telecopier numbers to which any such notice or demand to any party is to be directed may be changed at any time and from time to time by any party to this Agreement by such party's giving notice of change to the other

party hereto as above provided in this Section and to each Trustee under the Bond Resolutions at the addresses set forth in such Bond Resolutions. In computing any period of time from such notice, such period shall commence on the date received or, if sent via facsimile or other electronic media, on the date sent.

18. Miscellaneous. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement. This Agreement may be amended, changed, waived or modified only by written agreement executed by the City and NCPA.

The City shall, if requested by NCPA in connection with the issuance of any Bonds, cause an opinion or opinions in substantially the form attached hereto as Appendix B to be delivered by an attorney or firm of attorneys acting as counsel for the City.

This Agreement shall be construed in accordance with the laws of the State of California. If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. Whenever the Agreement requires the payment of interest and the interest rate specified herein is in excess of the amount of interest that may legally be charged in the circumstances, then such interest rate shall be changed to the maximum interest rate permitted by law. Notwithstanding the foregoing, each of the parties hereto acknowledges and agrees that (a) NCPA's willingness to enter into this Agreement and make proceeds of Bonds available to the City was induced and dependent upon the City's purchase of the Project as herein provided and (b) the City's obligations to make payments with respect to Debt Service or otherwise required under a Bond Resolution or this Agreement shall be absolute and unconditional as provided in this Agreement.

This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

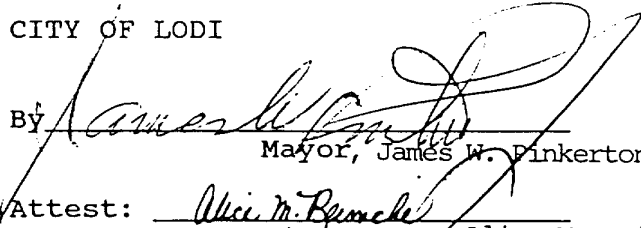
IN WITNESS WHEREOF, NCPA has executed this Agreement with the approval of its Commission, and the City has executed this Agreement in accordance with the authorization of its City Council, as of the date first above written.

NORTHERN CALIFORNIA POWER AGENCY

By _____

And _____

CITY OF LODI

By 

Mayor, James W. Pinkerton, Jr.

Attest:



City Clerk, Alice M. Reimche

APPENDIX A

ADDRESSES FOR NOTICES

Northern California Power Agency
180 Cirby Way
Roseville, California 95678
Attention: General Manager
Telephone No: (916) 781-3636
Telecopier No: (916) 783-7693

City of Lodi
221 West Pine Street
Lodi, California 95241
Attention: Electric Utility Director
Telephone No: (209) 334-5634
Telecopier No: (209) 333-6795

FORM OF OPINION OF COUNSEL

Northern California Power Agency
180 Cirby Way
Roseville, California 95678

Dear Sirs:

I am acting as counsel to the City of Lodi ("the City") under the Agreement for the Sale and Financing of Electric System Facilities, dated as of August 1, 1992 (the "Agreement") between the City and the Northern California Power Agency (the "Agency"), and I have acted as counsel to the City in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the City, (ii) all necessary documentation of the City relating to the authorization, execution and delivery of the Agreement, and (iii) an executed counterpart of the Agreement. (Capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Agreement.)

Based upon the foregoing and an examination of law and such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California, together with the governing instruments, ordinances and public proceedings of the charter City, I am of the opinion that:

1. The City is a municipal corporation, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within the State of California.
2. The City has full legal right, power and authority to enter into the Agreement and to carry out and consummate all transactions contemplated thereby, and the City has complied with the provisions of applicable law in all matters relating to such transactions required to be complied with as of the date hereof.
3. The Agreement has been duly authorized, executed and delivered by the City, is in full force and effect as to the City in accordance with its terms and, assuming that the Agency has all the requisite power and authority, and has duly executed and delivered such Agreement, constitutes the legal,

valid and binding obligation of the City enforceable in accordance with its terms.

4. Payments by the City under the Agreement will constitute an operating expense of the City and are to be made solely from the Revenues of its Electric System, as provided in Section 6(c) of the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the City of the Agreement, or the performance by the City of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the City, or any commitment, agreement or other instrument known to me after reasonable investigation to which the City is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the City (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the City or its affairs.

7. To the best of my knowledge after reasonable investigation, there is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or threatened against or affecting the City or any entity affiliated with the City or any of its officers in their respective capacities as such, nor is there any basis therefor, which questions the powers of the City referred to in paragraph 2 above or the validity of the proceedings taken by the City in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting creditors' rights generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transactions other than those described herein.

Very truly yours,

APPENDIX C

DESCRIPTION OF PROJECT

[To be Provided by the City of Lodi]